

CITY OF NEWPORT BEACH



REQUEST FOR PROPOSAL NO. 19-69 COMMUNITY ENGAGEMENT RELATED TO A FUTURE GENERAL PLAN UPDATE

RFP Due Date: *Friday, April 26, 2019, 11 a.m. (PDT)*

RFP Administrator: Anthony Nguyen, Purchasing Agent
949-644-3080
anguyen@newportbeachca.gov

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SECTION 1:
RFP OVERVIEW



INTRODUCTION

Objective:

“Cities have the capability of providing something for everybody, only because, and only when, they are created by everybody.” – Jane Jacobs, author

The City seeks a qualified consultant or consulting team (Consultant) to creatively and comprehensively gather community input on the existing Newport Beach General Plan including its Vision Statement, as well as its goals and policies. The Consultant will prepare and execute a community outreach program with the goal of receiving and documenting suggested revisions to the General Plan from as many constituents and groups as possible. At the conclusion of the program, the Consultant will prepare a detailed written summary of what was learned during the process. The summary will be a consensus perspective, but it will include all the various voices and thoughts expressed. The community engagement process has been labeled the “Listen and Learn” process.

The term “community” is the entire population living and/or working in the City, including residents, special interest groups, community and homeowner’s associations, property owners, the business community and regulatory agencies; the term is all-inclusive and it includes all persons who have an interest or “stake” in the community. The City Council places significant value on its residents’ perspective; however, all viewpoints are important to consider.

The purpose of the Listen and Learn process is to embark on a well-informed, focused update of the General Plan. The current General Plan was adopted in 2006, and has been amended several times since primarily as a result of project-specific applications. The core of the plan seems sound. It is not the current intention of the City to create a new plan, rather the City is interested in updating the existing plan to reflect a potentially changed community vision and the current General Plan requirements of State Law (Government Code §65300-65303.4).



The City Council has created an ad-hoc committee with seven voting members and one ex officio member (non-voting) called the General Plan Update Steering Committee (Steering Committee) to guide the Listen and Learn process. This Steering Committee will provide direction to the Consultant and staff throughout the process and the Steering Committee will provide a forum for public input on the initial phases of the overall update process.

DRAFT SCHEDULE OUTLINE

a) April 2019 to June 2019 (2 months)

- Request for proposals
- Proposal evaluations
- Consultant selection

b) July 2019 to March 2020 (8 months)

- Community outreach and visioning

Definitions:

The following is an explanation of terms frequently referred to in this document:

- “City”: Refers to the City of Newport Beach.
- “Request for Proposal (RFP)”: Refers to the solicitation process wherein the City is seeking proposals.
- “Proposal”: The formal response to this solicitation submitted to the City by a Proposer or Proposers.
- “Proposer”: Refers to the individual, limited liability company, partnership, corporation, or other legal entity that is submitting a proposal in response to this RFP process.
- “Project”: The preparation and execution of a comprehensive community outreach program, as well as the preparation of a detailed written summary of what was learned during the Listen and Learn process. The Summary should be presented in an easy-to-navigate guide for a future update of the General Plan.
- “Shall”: Refers to a mandatory requirement.
- “Consultant/Contractor”: Refers to the individual, limited liability company, partnership, corporation, or other legal entity including their subcontractors that is awarded a contract by the City upon conclusion of this RFP process.
- “Contract” or “Agreement”: A promissory agreement with specific terms between the City and one or more parties that creates, modifies or describes a legal relationship in exchange for consideration.
- “Steering Committee”: Refers to the General Plan Update Steering Committee, an ad-hoc committee created by the City Council.

Proposal Evaluation Criteria:

Proposals will be evaluated on the basis of the response to all of the provisions of this RFP. Since this solicitation is an RFP as opposed to a Bid, pricing alone will not constitute the entire selection criterion. The City may use some or all of the following criteria and corresponding percentages in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The City reserves the right to modify each evaluation criterion and percentage of the score as deemed appropriate from time to time.

POTENTIAL PROPOSAL EVALUATION CRITERIA	
EVALUATION CRITERIA	PERCENTAGE OF SCORE
Qualifications and experience of the proposing Consultant firm or team conducting similar projects, of comparable complexity, and magnitude, particularly for government agencies.	60%
A demonstrated understanding of the requested scope of services or work program.	15%
The Consultant’s ability to deploy services as identified in the Scope of Services on schedule.	15%
Recent references from local clients with particular emphasis on local government.	10%

The City reserves the right to determine whether a proposal meets the specifications and requirements of this RFP and reject any proposal that, in the City’s sole discretion, fails to meet the detail or intent of the requirements. The City reserves the right to reject any and all proposals.

Selection Process:

The Steering Committee intends to employ a three-step process to identify a Consultant to recommend to the City Council for this Project. However, this process may be varied at the discretion of the Steering Committee.

In the first step, known as “Technical Evaluation,” a panel of City staff, with oversight of the Steering Committee, will rate the technical qualifications of all proposals using the criteria described above to arrive at a Technical Score. Each criterion will be assigned a unique scoring weight based on the significance of each criterion to the overall success of the Project. Since this is a procurement for a professional service, cost will not be assessed during Technical Evaluation. If, upon conclusion of Technical Evaluation, (1) there are multiple firms with similar Technical Scores; or (2) no single firm has been distinguished as a likely successful candidate, the City reserves the right to initiate live interviews. Firms invited to interview shall have their panel interviews evaluated and scored, resulting in adjustments to the Technical Score.

In the second step, once an order of candidate rankings has been achieved based on Technical Score, all proposals and their respective rankings will be presented to the Steering Committee at a public meeting. The Steering Committee may choose to interview one or more candidates at one of its regularly scheduled public meetings.

In the third step, the Steering Committee will identify the highest-qualified firm and direct City staff to open its Cost Proposal, which will be evaluated for feasibility and reasonableness. If the Cost Proposal is deemed to be unfeasible and/or unreasonable, efforts may be initiated by the City to negotiate with the Proposer to reach more favorable terms. If these negotiation efforts fail, the City will consider the Cost Proposal from the second highest qualified firm, and so forth until a desired resolution is achieved. After the conclusion of the Selection Process, the Steering Committee will make one or more recommendations to the City Council about the Consultant.

RFP Schedule:

The following is a tentative schedule of the RFP process. While the City will attempt to apply the necessary resources to maintain this schedule, the following dates are merely projections and the City reserves the right to modify this schedule as needed to accommodate the completion of this RFP process.

TENTATIVE RFP SCHEDULE	
RFP Published:	Monday, March 25, 2019
Questions from Proposers Due:	Monday, April 8, 2019
Questions and Responses Posted:	Monday, April 15, 2019
Proposals Due:	Friday, April 26, 2019, 11 a.m. (PDT)
Interviews:	Week of May 6, 2019
Anticipated Contract Award:	June-July 2019

INSTRUCTIONS

Submittal Information:

Proposals are due by 11 a.m. on Friday, April 26, 2019. In an effort to comply with environmentally-friendly practices, proposals will only be accepted in electronic format via email to the email address of the RFP Administrator indicated below.

RFP Administrator: Anthony Nguyen
T: 949-644-3080
E: anguyen@newportbeachca.gov
(Please mark all submittals "RFP #19-69 – Community Engagement Related to a Future General Plan Update")

It is the responsibility of the Proposer to ensure that their proposal is received before the stated deadline. The RFP Administrator may be contacted at 949-644-3080 to verify receipt of proposals. Postmarks will not be considered as a valid excuse for delayed or missing proposals. In the event Proposers either cannot submit proposals electronically or the proposals are too large to transmit, Proposers must contact the RFP Administrator to make arrangements for hard copy delivery.

Questions, Answers and Addenda to RFP:

Prior to the RFP submission deadline questions may arise regarding any aspect of this request for proposals. By Monday, April 8, 2019, all questions pertaining to this RFP shall be directed to the RFP Administrator only. The RFP Administrator will draft, in consultation with other City staff, a response to all questions submitted by all prospective Proposers. The responses will be emailed to all potential Proposers who have requested responses on Monday, April 15, 2019. Additionally, the questions and responses will be posted on the City's website on the same date. Changes to the RFP itself shall only be made by the City via formal written addenda. All addenda shall become a part of the RFP document requiring response by the proposer where indicated.

Proposal Format:

Proposers shall submit one (1) electronic copy of their proposals to the RFP Administrator. Please keep the email and all attachments under **10 megabytes total**. Please refer to Proposal Requirements Checklist (Attachment C) for specific directions regarding the content and format of your proposal. As closely as possible, please adhere to the format and order provided in the Proposal Requirements Checklist when assembling proposals. Please note that part of the evaluation criteria takes into consideration the *responsiveness* of a proposal; proposals missing the required components listed below will be evaluated accordingly.

TERMS AND CONDITIONS

I. Acceptance of Terms and Conditions

Submission of a proposal indicates acceptance by the company submitting the proposal of the terms, conditions and specifications contained in this RFP and Draft Agreement, unless clearly and specifically stated otherwise in the completed Statement of Compliance.

II. Precedence of Terms and Conditions

All other terms and conditions of the Draft Agreement attached within this RFP as Appendix A are hereby incorporated into the terms and conditions of this RFP. In the event of a conflict of terms and conditions between the RFP document and the draft agreement, the terms and conditions expressed in the Draft Agreement shall take precedence.

III. Public Record

Upon submission of a proposal and other materials for consideration by the City, such proposals and materials shall become the property of the City of Newport Beach. Proposals may be subject to public inspection and disclosure pursuant to state and federal law after the award of a contract for this Project. Prior to the RFP deadline, proposals may be modified or withdrawn by an authorized representative of the Proposer by written notice to the RFP Administrator.

IV. Availability of Records

All relevant documents pertaining to this RFP and procurement process shall be made available by the Community Development Department upon successful conclusion of the entire procurement process.

V. Late Proposals

Any proposal which is not received by the RFP Administrator prior to the deadline date and time set forth in this solicitation may not be considered. The City assumes no responsibility or liability for the transmission, delay, or delivery of a proposal by either public or private carriers.

VI. Specificity of Information

No verbal or written information which is obtained other than through this RFP or its addenda shall be binding on the City. No employee of the City is authorized to interpret any portion of this RFP or give information as to the requirements of the RFP in addition to that contained in or amended to this written RFP document.

VII. Errors and Omissions

This RFP cannot identify each specific, individual task required to successfully and completely implement this Project. The City relies on the professionalism and competence of Proposers to be knowledgeable of the general areas identified in the scope of work and to include in their proposals all materials, equipment, required tasks and subtasks, personnel commitments, man-hours, labor, direct and indirect costs, etc. Proposers shall not take advantage of any errors and/or omissions in this RFP document or in the firm's specifications submitted with their proposals. Where such errors or omissions are discovered by the City, full instructions will be given by the City in the form of an addenda.

VIII. Proposal Validity

Unless otherwise noted by the Proposer, all proposals shall be held valid for a period of 180 days.

IX. Right of Rejection

The City reserves the right to: (1) Accept or reject any and all proposals or any part of any proposal, and to waive minor defects or technicalities in such; (2) Request clarification of any information contained in a proposal; (3) Solicit new proposals on the same project, or on a modified project, which may include portions of the original RFP as the City may deem necessary; (4) Disregard all non-conforming, non-responsive, or conditional proposals, (5) Reject the response of any proposer who does not pass the evaluation to the City's satisfaction, (6) Allow for the correction of errors and/or omissions; (7) Select the proposal that will best meet the needs of the City, and (8) Negotiate service contract and terms with the successful Proposer.

X. Right of Rejection of Lowest Fee Proposal

The City is under no obligation to award this project to the Proposer offering the lowest fee proposal. Evaluation criteria expressed in this RFP solicitation shall be used in the proposal evaluation process. In evaluating proposals, the City may consider the qualifications of the proposers and whether the proposals comply with the prescribed requirements. The size and scope of the Project at hand may dictate the degree to which Qualifications-Based Selection processes are utilized.

XI. Non-Compliance

Proposers and/or proposals that do not meet the stated requirements for this Project may be considered noncompliant and may be disqualified, unless such noncompliance is waived by the City. During the evaluation process, the City reserves the right to request additional information or clarification from those submitting proposals, and to allow corrections of errors and/or omissions.

XII. Exceptions to Proposal Requirements

Proposers may find instances where they must take exception with certain requirements or specifications of the RFP and/or Draft Agreement. All exceptions shall be clearly identified using the Statement of Compliance, and written explanations shall include the scope of the exceptions, the ramifications of the exceptions for the City, and a description of the advantage to be gained or disadvantages to be incurred by the City as a result of these exceptions.

XIII. Determination of Responsiveness and Responsibility

The City shall have sole authority in determining the responsiveness and responsibility of any and all Proposals. For Proposals containing exceptions to specifications and/or requirements, the City shall have sole authority in determining the extent to which exceptions affect the responsiveness and responsibility of any and all Proposals.

XIV. Obligation to Award

The City of Newport Beach is not obligated to enter into a Contract or Agreement on the basis of any proposal submitted in response to this RFP. City reserves the right to award multiple contracts for this Project if it is deemed most advantageous to the City.

XV. Bidder Reimbursement Prohibition

The City will not pay for any information herein requested, nor are they liable for any costs incurred by any vendors prior to award of a contract or purchase order. The City may require the finalist proposer(s) to provide on-site presentations and demonstrations of the product(s)/service(s) proposed by the proposer(s). All costs associated with the demonstrations or follow-up interviews are the sole obligation of the proposer(s).

XVI. Gratuity Prohibition

Proposers shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the City or Steering Committee member for any purpose as it may be perceived as an attempt to influence consideration of this proposal. Submission of a Proposal indicates Proposer certifies that they have not paid nor agreed to pay any person, other than a bona fide employee of the Consultant, a fee or a brokerage resulting from the award of the contract.

XVII. Contact with City Personnel or Entities

During the RFP procurement process, proposal evaluation process and proposal selection process, the RFP Administrator is to serve as the primary point of contact for any and all matters pertaining to this RFP and Project. Proposers shall not contact any City personnel or entities other than the RFP Administrator for matters regarding this Project until conclusion of the entire procurement process, which shall be defined as Agreement Award. Unauthorized contact may result in disqualification of Proposals.

XVIII. Indemnification

Proposer, at its own expense and without exception, shall indemnify, defend and pay all damages, costs, expenses, including attorney fees, and otherwise hold harmless the City, its employees, and agents, from any liability of any nature or kind in regard to the delivery of these services. Submission of a Proposal indicates Proposer waives the right to claims for damages of any nature, whatsoever, based on the Proposal solicitation and/or selection process.

XIX. Insurance Requirements

The selected Consultant(s) for this Project shall be required, prior to the execution of a Contract, to furnish proof of insurance. The specific insurance types and limits depend on the Project and can be found in the Draft Agreement (Appendix A) of this RFP solicitation.

XX. Compliance with All Applicable Laws

Proposer declares that it shall comply with all licenses, statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted, including, but not limited to, appropriate contractor licensing and business licensing.

XXI. Inclusive Proposal Pricing

Proposal pricing shall include any and all applicable licenses, insurance coverage, endorsements, bonding and if necessary, any wage compliance deemed necessary to perform the Work or Services as part of the Project described in this RFP. City will not be responsible for reimbursing Consultants for any charges not included in the Proposal pricing that are incurred in securing these requirements.

XXII. Subcontractor/Joint Ventures

The selected Consultant shall be the Prime Contractor performing the primary functions of the Agreement. If any portion of the Agreement is to be performed by a subcontractor, this must be clearly set forth in the Proposal submittal as to what part(s) is/are to be delegated. The City reserves the right to reject any Proposal wherein use of subcontractors significantly affects the ability of the Proposer to function as the Prime Contractor on the awarded Agreement. The Prime Contractor will at all times be responsible for the acts and errors or omissions of its subcontractors or joint participants and persons directly or indirectly employed by them. Acceptance or rejection of a Proposer's request to use subcontractors is at the sole discretion of the City.

**SECTION 2:
SCOPE OF SERVICES**



SCOPE OF SERVICES

The following is a basic description of the anticipated work program components. These components are not all-inclusive and the Consultant is encouraged to provide recommendations to help achieve the City's objective.

Task 1. Consultant Familiarization with the General Plan

- a) The Consultant shall review and become familiar with the current General Plan and all its elements, goals and policies. Particular attention must be paid to the Vision Statement.
- b) The Consultant shall be familiar with current State requirements for general plans, as identified in the Governor's Office of Planning and Research 2017 General Plan Guidelines or any successor document, to understand where the General Plan must be updated to comply with State law.
- c) The Consultant shall attend all Steering Committee meetings throughout the process to observe, participate, and prepare detailed minutes. The Proposal shall include a cost per meeting.

Task 2. Community Engagement and Outreach Program Preparation

- a) The Consultant, with the assistance of the Steering Committee and City staff, shall prepare a community engagement and outreach program (Outreach Program). The purpose of the Outreach Program will not be for the consultant to suggest ways the General Plan should be changed, rather the goal of the Outreach Program is to creatively engage as many constituents as possible, to energize their participation, and to solicit and receive as much feedback as possible about areas of concern in the current General Plan, including the Vision Statement. The process will be open, transparent, focused in scope, and inclusive. Program execution must be interactive where the community can:
 - Learn about the current General Plan and provide input as to how it may need to be updated;
 - Examine and provide input on the existing General Plan Vision Statement; and
 - Provide input on the various General Plan Elements, Goals and Policies contained therein that may be updated in the future to reflect a refreshed Vision Statement, emerging trends, and State law requirements.

The program must include:

- Preparation and maintenance of an interactive online webpage/portal. Please see the City's initial pages for the effort at www.newportbeachca.gov/gpupdate. The City intends to host the website and provide Consultant access to the system for creation and maintenance purposes, unless there is a compelling reason to do otherwise;
- Appropriate user-friendly educational materials;
- A minimum of seven visioning workshops, at least one in each Council District, where the community can debate what is working, what is not working, and where we want to go as a community. The Proposal shall include a cost-per-meeting, as there may be the potential to hold additional meetings beyond the initial seven workshops;
- Individual stakeholder meetings, as required. The Proposal should include a cost-per-meeting since a minimum or maximum number of meetings has not been identified at this time;

- Innovative methods of driving active participation from the community;
- Digital engagement through use of virtual town hall meetings, citywide and neighborhood-centric on-line surveys, and use of various social media platforms. The purpose of using digital forums is to better reach those members of the community who might not be able to participate in physical community meetings for whatever reason; and
- A schedule for implementation of the Program.

The Outreach Program will be reviewed and approved by the Steering Committee prior to kickoff.

- b) The Consultant, with the assistance of the Steering Committee and City staff, shall implement the Outreach Program based upon the identified schedule. City staff will assist in scheduling and securing proper locations for workshops or other stakeholder meetings.

Task 3. Capturing Community Desires

The Consultant shall be responsible for capturing and documenting the community’s comments and suggestions for change throughout the Listen and Learn process. The overall purpose is to create a focused and easy-to-navigate resource to guide potential updates to the General Plan after the conclusion of the Listen and Learn process. This Task shall include the following minimum components:

- A detailed discussion with a consensus statement, a summary of desired changes to the Vision Statement, and all other potential changes to the General Plan or issues to be addressed through other means (e.g., Zoning Code, etc.);
- A systematic record of all the voices and thoughts expressed; and
- An up-to-date, user-friendly online portal that is maintained throughout the project.

The final draft document must be created in a presentable, organized, user-friendly fashion that includes a complete overview of the Outreach Program efforts and everything that was learned from the Community. The Consultant shall present the draft document and the information contained therein to the Community at a Steering Committee meeting. The Steering Committee may direct changes to the draft document and the Consultant shall be responsible for producing a final document.

Consultant Representative

The Consultant shall assign a primary representative and an alternate to perform the services described in the scope of work. Approvals of the individuals assigned shall be at the Steering Committee’s discretion. Each individual shall be identified in the proposal and resumes shall be provided with references. The Consultant’s representatives shall remain responsible for all duties from contract negotiations through project completion. If the primary representative is unable to continue with the project, then the alternate representative is expected to become the primary representative.

Additional Consultant Responsibilities

The Consultant shall be responsible for completing the specified services in accordance with the City’s standard “Professional Services Agreement.” A copy of the standard agreement is attached as Appendix A. Services specified in this agreement shall be taken directly from the Consultant’s proposal and from the “Request for Proposal.” In addition, the scope of services may be adjusted at the discretion of the City to incorporate

information generated in the interview process or as otherwise deemed appropriate by the Steering Committee or City Council.

City Responsibilities

The City will provide the following items to assist the Consultant in completing the requested services:

- Primary and alternate City representative;
- General Plan;
- Preparation of map exhibits, if needed;
- Work with the Consultant to coordinate and schedule meeting spaces for Staff, Steering Committee, stakeholder and public meetings;
- Notice Steering Committee meetings and post meeting agendas and
- Provide staff support, oversight and direction to the Consultant throughout the process.

Payment for services shall be monthly based upon satisfactory progress, submission of requests for reimbursement, and percent of work completed, with a retention factor, which recognizes that the value of the work is heavily dependent on delivery of the final report.

SECTION 3: PROPOSAL ATTACHMENTS



ATTACHMENT A: STATEMENT OF COMPLIANCE

Instructions: Each proposal must be accompanied by a signed Statement of Compliance. The Proposer must sign one, and only one of the declarations stated below and remit as part of your Proposal as Attachment A.

No Exceptions. The undersigned declares that the Proposal submitted by (Name of Firm) _____ to prepare and execute a community outreach program with the goal of receiving and documenting the community’s desire for change with respect to its General Plan as described in the RFP was prepared in strict compliance with the instructions, conditions, and terms listed in the RFP, Scope of Services and Draft Agreement with no exceptions taken.

Signature

Date

Printed Name and Title

Exceptions. By signing below, the Proposer acknowledges that the Proposal submitted by (Name of Firm) _____ has been prepared in consideration of and with exception to some of the terms of the RFP, Scope of Services and Draft Agreement. By signing below, the Proposer declares that the Proposal includes a statement that identifies each item to which the Proposer is taking exception or is recommending change, includes the suggested rewording of the contractual obligations or suggested change in the RFP, and identifies the reasons for submitting the proposed exception or change. The City reserves the right to reject any declarations that are not accompanied with the required documentation as described above.

Signature

Date

Printed Name and Title

[Attach a separate sheet(s) detailing each exception being taken]

ATTACHMENT C: PROPOSAL REQUIREMENTS CHECKLIST

Instructions: This checklist is provided as a guide for Proposers to assemble Proposals. As closely as possible, please adhere to the following format and order when assembling proposals. Please note that part of the evaluation criteria takes into consideration the responsiveness of a proposal; proposals missing any required attachments shall be evaluated accordingly. Submittals should follow the same order and sections indicated below:

PART 1: TECHNICAL PROPOSAL SECTION

SECTION A: PROPOSER BACKGROUND

COVER LETTER

A cover letter not to exceed two (2) pages in length shall summarize key elements of the proposal and demonstrate an understanding of the Project as requested. The cover letter shall be signed by a representative able to submit a formal offer and bid the Proposer to contractual obligations.

ORGANIZATIONAL STRUCTURE

Provide identification of the project team, including organizational chart and resumes of each team member. The consultant's primary representative shall be available on all occasions for discussion with City staff. Specific responsibilities of each team member, along with their anticipated total effort in the projects, shall be detailed in a matrix of total hours of work for each task versus each job classification on the project. Identify key personnel from your firm, including specific personnel that would be assigned to this Project, if any. Any and all Prime Contractor and Subcontractor relationships and responsibilities must be detailed.

SECTION B: METHODOLOGY

PROPOSAL – METHODOLOGY

Provide your proposed work plan, which shall address every point listed in the scope of services. The ideal work plan should provide an overview of the processes that would be utilized by your firm in facilitating this Project and demonstrate familiarity with developing similar plans. If your firm offers additional services not specifically described in the Scope of Services, provide a description of these services and the benefit they serve to the City.

ANTICIPATED WORK SCHEDULE

Provide a comprehensive proposed project schedule, including proposed start and completion dates for each task.

SECTION C: PROPOSER EXPERIENCE

MINIMUM REQUIREMENT: EXPERIENCE

Demonstrate experience with at least three (3) projects of a similar scope and nature by providing a synopsis of each project, as well as relevant exemplary work produced for each project.

REFERENCES/RECENT PROJECT HISTORY

Provide at least three (3) references for whom your firm has performed similar services. Provide a brief synopsis of the services performed, and contact information for each reference. Emphasis will be placed on references that are local government entities. The City reserves the right to contact any references provided.

SECTION D: PROPOSAL ATTACHMENTS

ATTACHMENT A: STATEMENT OF COMPLIANCE

Proposers must submit a signed Statement of Compliance with proposals. The Statement of Compliance is separated into two sections, only one of which is to be signed. The first section states that the Consultant agrees with all terms and conditions as indicated in this RFP document and/or Draft Agreement; the second section states that the Consultant intends to take exception to certain terms and conditions within the RFP document and/or Draft Agreement.

ATTACHMENT B: PROPOSER INFORMATION FORM

ATTACHMENT C: PROPOSAL REQUIREMENTS CHECKLIST

OTHER INFORMATION

Include any other information you consider to be relevant to the proposal.

PART 2: COMPENSATION PROPOSAL SECTION

COST/FEE PROPOSAL

Provide a not-to-exceed fee for the services to be provided and current fee schedule for each job classification. **These items shall be submitted in a separate submittal.** The fee shall be broken down showing hours for each job classification for each task, fee for each task, and shall include miscellaneous costs such as travel, duplication, clerical support, etc. The City reserves the right to eliminate any tasks from the scope of work, and reduce the not-to-exceed fee by the cost of the task eliminated.

SUBMISSION INSTRUCTIONS

ELECTRONICALLY TRANSMIT ONE (1) COPY OF THE TECHNICAL PROPOSAL SECTION TO RFP ADMINISTRATOR

Proposals must be e-mailed to: anguyen@newportbeachca.gov

ELECTRONICALLY TRANSMIT ONE (1) COPY OF THE COMPENSATION PROPOSAL SECTION TO RFP ADMINISTRATOR

Proposals must be e-mailed to: anguyen@newportbeachca.gov

SECTION 4: APPENDICES

Appendix A: Draft Agreement

This Draft Agreement DOES NOT need to be completed and returned as part of your proposal. Rather, you are required to review the Draft Agreement and identify any terms that you do not agree with or need to take exceptions to. These changes and exceptions shall be noted in the Statement of Compliance (Attachment A of this RFP).

IMPORTANT Please disregard any language in the light gray font, as those are option sections that may not be applicable to this project. Exceptions to this rule are as follows:

Exhibit C (Insurance Requirements), Section D. Professional Liability (Errors & Omissions) is listed in the light gray font but shall apply to this project and contract.



**{ON-CALL} PROFESSIONAL SERVICES
AGREEMENT
WITH _____ FOR
_____**

THIS {ON-CALL} PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into as of this _____ day of _____ (“Effective Date”), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city (“City”), and _____, a _____ (“Consultant”), whose address is _____, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to _____ (“Project”).
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on _____, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference (“Services” or “Work”). City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. SERVICES TO BE PERFORMED {ON-CALL AGREEMENT}

3.1 Consultant shall perform the on-call services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference (“Services” or “Work”). Upon written request from the Project Administrator as defined herein, Consultant shall provide a letter proposal for Services requested by the City (hereinafter referred to as the “Letter Proposal”). The Letter Proposal shall include the following:

3.1.1 A detailed description of the Services to be provided;

3.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

3.1.3 The estimated number of hours and cost to complete the Services; and

3.1.4 The time needed to finish the specific project.

3.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Consultant shall diligently perform the duties in the approved Letter Proposal.

4. TIME OF PERFORMANCE

4.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A {and the Letter Proposal}. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A {and the Letter Proposal}, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

4.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

4.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

4.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

5. COMPENSATION TO CONSULTANT

5.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the {Letter Proposal and the} Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Dollars and 00/100 (_____)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

5.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

5.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement {and the Letter Proposal} or specifically approved in writing in advance by City.

5.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement.

Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B {and the Letter Proposal}.

6. PROJECT MANAGER

6.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated _____ to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

6.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

7. ADMINISTRATION

This Agreement will be administered by the _____. City's _____ or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

8. CITY'S RESPONSIBILITIES

To assist Consultant in the execution of its responsibilities under this Agreement,

City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

9. STANDARD OF CARE

9.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards. Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

9.2 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

10. HOLD HARMLESS

10.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this (collectively, the "Indemnified Parties), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), and which may arise from or in any manner relate (directly or indirectly) to any breach the negligence, recklessness, or willful misconduct of the terms and conditions of this Agreement, any work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them.

10.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

11. INDEPENDENT CONTRACTOR

11.1 It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11.2 Consultant agrees and acknowledges that no individual performing Services or Work pursuant to this Agreement shall: work full-time for more than six (6) months; work regular part-time service of at least an average of twenty (20) hours per week for one year or longer; work nine hundred sixty (960) hours in any fiscal year; or already be a CalPERS member.

11.3 Consultant must submit to and pass a criminal background investigation by providing a complete set of fingerprints to City prior to commencing or performing Services or Work. Consultant is required to submit any fees for the criminal background investigation according to the City's most current administrative fee schedule or successor document. Fingerprints may be required to be updated every five (5) years.

12. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

13. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

14. PROGRESS

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

15. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

16. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

17. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A {and the Letter Proposal}. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

18. OWNERSHIP OF DOCUMENTS

18.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party.

Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

18.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

18.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18.4 CADD data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by the City in .*dwg* file format, on a CD, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department. The City will provide Consultant with City title sheets as AutoCAD file(s) in .*dwg* file format. All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18.5 All improvement and/or construction plans shall be prepared with indelible waterproof ink or electrostatically plotted on standard twenty-four inch (24") by thirty-six inch (36") Mylar with a minimum thickness of three (3) mils. Consultant shall provide to City 'As-Built' drawings and a copy of digital Computer Aided Design and Drafting ("CADD") and Tagged Image File Format (.*tiff*) files of all final sheets within ninety (90) days after finalization of the Project. For more detailed requirements, a copy of the City of Newport Beach Standard Design Requirements is available from the City's Public Works Department.

19. OPINION OF COST

Any opinion of the construction cost prepared by Consultant represents the Consultant's judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to Consultant or contractor bids or actual cost to City.

20. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

21. INTELLECTUAL PROPERTY INDEMNITY

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

22. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

23. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

24. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

25. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

26. CONFLICTS OF INTEREST

26.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

26.2 If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

27. NOTICES

27.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

27.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: _____

City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

27.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: _____

28. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code

sections 900 *et seq.*).

28.2 To the extent that Consultant's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Consultant to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor/Consultant's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Consultant shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*).

29. TERMINATION

29.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

29.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

30. PREVAILING WAGES

Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman needed to execute the Work contemplated under the Agreement shall be paid to all workmen employed on the Work to be done according to the Agreement by the Consultant and any subcontractor. In accordance with the California Labor Code (Sections 1770 *et seq.*), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. The Consultant is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Consultant or any subcontractor under him/her to comply with all State of California labor laws, rules and

regulations and the parties agree that the City shall not be liable for any violation thereof.

30.1 Unless otherwise exempt by law, Consultant warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Consultant further warrants that it is currently registered and qualified to perform “public work” pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

31. PREVAILING WAGES {MODIFIED PREVAILING WAGES}

31.1 If any of the Work contemplated under the Agreement is considered a “public work”, pursuant to the applicable provisions of the Labor Code of the State of California, including but not limited to Section 1720 *et seq.*, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman shall be paid to all workmen employed on such. In accordance with the California Labor Code (Sections 1770 *et seq.*), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. The Consultant is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Consultant or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

31.2 In such event, unless otherwise exempt by law, Consultant warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Consultant further warrants that it is currently registered and qualified to perform “public work” pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

32. STANDARD PROVISIONS

32.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

32.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

32.3 Waiver. A waiver by either party of any breach, of any term, covenant or

condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

32.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

32.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

32.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

32.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

32.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

32.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

32.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

32.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

32.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**
Date: _____

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: Aaron C. Harp
City Attorney

By: _____

ATTEST:
Date: _____

CONSULTANT: _____, a

Date: _____

By: Leilani I. Brown
City Clerk

By: _____

Date: _____

By: _____

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates
 Exhibit C – Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

SCHEDULE OF BILLING RATES

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement.
 - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this

Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.

B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement shall be included as insureds under such policies.

C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- E. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- F. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

- G. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

- H. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.